

No. 13133

United States
Court of Appeals
for the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

W. T. GRANT COMPANY, a Corporation,
Respondent.

Supplemental
Transcript of Record

Petition for Enforcement of an Order of the
National Labor Relations Board

FILED

JAN 9 1952

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VICTOR LAZZARO,

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Appearing for Local 428, AFL.

GENERAL COUNSEL'S EXHIBIT No. 52

Official Report of Proceedings
Before the
National Labor Relations Board
Case No. 20-RC-780

In the Matter of:

W. T. GRANT COMPANY

and

RETAIL CLERKS UNION, LOCAL 428, Affiliated
With RETAIL CLERKS INTERNATIONAL
ASSOCIATION, A. F. of L.

Place: San Francisco, California.

Date: March 3, 1950.

* * *

VICTOR J. LAZZARO

Cross-Examination

By Mr. Foley:

Q. Mr. Lazzaro, you said that Mr. Foley said in his nice way. Was there any friction at this meeting at all?

The Witness: Must I answer, Mr. Examiner?

Hearing Officer Berke: I haven't heard any objection. If there is any objection——

Mr. McTernan: No, I have no objection to it.

A. None whatever, sir.

Q. (By Mr. Foley): All harmonious, Mr. Lazzaro?
A. Yes, sir.

(Testimony of Victor J. Lazzaro.)

Q. We respected one another's views and opinions?

A. Yes, sir, as dignified gentlemen. [15*]

* * *

Q. Well, I refer specifically to Mr. McLoughlin's thoughts as expressed when I suggested that he go to the Labor Board?

A. I can't testify as to his thoughts.

Q. I don't want you to, I don't even want you to testify as to what he said, but did he not say that, oh, well, since we had, or, in effect, "Since we have to go to the Board, I would like to think that over a time." Didn't he say that? [18]

A. I don't remember that, sir. I am sure that we did say that we were surprised that the Company would take the attitude that it was necessary to go to the Board, since we had sufficient representation cards that could easily have been cross-checked against the pay roll. I believe we practically insisted that we don't have an election, since it takes so much time and so much nonsensical procedure. That is our feeling, sir; has been. [19]

* * *

Hearing Officer Berke: Well, before we dismiss the witness, is it going to be possible to stipulate with respect to the appropriate unit? Let's go off the record on this.

(Discussion off the record.)

Hearing Officer Berke: On the record.

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Victor J. Lazzaro.)

Mr. Foley: My objection is only to one word in this unit, that is the word "trainees." We have no classification such as trainees. I should like to substitute the word "floorman" there. We have two people who are loosely referred to as trainees in the store, one is the Assistant Manager, who is specifically named, and the other is not specifically named, and I should just like to substitute the word "floorman." [22]

* * *

Hearing Officer Berke: Well, exactly what is a floorman and what he does?

Mr. Foley: Is one who is employed by the Personnel Department in the Company's executive offices in New York, is in training for store management, is subject to transfer for training under various store managers, and while at work at any store, is assigned a certain part of the store, assigned to a certain part of the store and may effectively recommend the hiring, firing, and promotion of people working there in that particular store, or part of the store.

Mr. McTernan: So stipulated for the [23] Union.

* * *

Mr. Foley: I wish you would let me go on the record, though. I would like to——

Hearing Officer Berke: We are on the record.

Mr. Foley: I would like to say here that during Mr. Lazzaro's testimony, he referred to a store operation manual in which the Grant Company's

(Testimony of Victor J. Lazzaro.)

labor policy is set forth. The Grant Company has a uniform policy. It is not flexible. We believe in every case that all people working in the store, excepting store manager, assistant store manager and floorman, should be included in the unit. We don't believe that office people should be ever excluded from the unit, and we do not take a flexible position that where the union wants them in, we want them out, or where the union wants them out, we want them in. We want them in all the time. And I am saying that particularly in view of the Moss decision in 88 NLRB. [24]

* * *

Mr. McTernan: Do I understand that the Board rules do not provide for time to answer any briefs that are filed?

Hearing Officer Berke: That is correct. We don't have that procedure of answering a brief after it comes in. Now, within the time that is allowed you under the rule, you may ask for additional time from the Hearing Officer, or you may request the Board for additional time, but you have got to make that request within the time normally allowed.

Mr. McTernan: Well, in that case, I will request the time, the additional two weeks.

Hearing Officer Berke: All right. You may have the same time that Mr. Foley has.

Mr. McTernan: Yes. And I might state if I get Mr. Foley's brief without that three weeks, I am going to make an additional request to the Board

(Testimony of Victor J. Lazzaro.)

for additional time to answer anything that he files.

Hearing Officer Berke: Well, of course, that is a matter that is up to you and the Board.

Mr. Foley: There won't be any occasion for Mr. McTernan to answer anything that I might say. My sole purpose is, I represent a national organization, and I want to go on record in Washington as having a record of consistency, trusting that when any occasion arises where a suggestion is made that we deviate from a consistent policy, that the [30] Board will consider the fact that we acted consistently throughout all our labor relations matters. That is all I am concerned with.

Mr McTernan: Well, I might want to answer that. [31]

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Received in evidence November 13, 1950.

[Endorsed]: No. 13133. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. W. T. Grant Company, a Corporation, Respondent. Supplemental Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed October 15, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

